

Calendar No. 666

93<sup>d</sup> CONGRESS  
2<sup>d</sup> SESSION

S. 2747

[Report No. 93-690]

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 27, 1973

Mr. WILLIAMS (for himself, Mr. JAVITS, Mr. KENNEDY, and Mr. RIBICOFF)  
introduced the following bill; which was read twice and referred to the  
Committee on Labor and Public Welfare

FEBRUARY 22, 1974

Reported, under authority of the order of the Senate of February 21 (legislative  
day, February 19), 1974, by Mr. WILLIAMS, with amendments

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A BILL

To amend the Fair Labor Standards Act of 1938 to increase  
the minimum wage rate under that Act, to expand the  
coverage of the Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE; REFERENCES TO ACT

4 SECTION 1. (a) This title Act may be cited as the  
5 "Fair Labor Standards Amendments of ~~1973~~ 1974".

6 (b) Unless otherwise specified, whenever in this title  
7 Act an amendment or repeal is expressed in terms of an

8 amendment to, or repeal of, a section or other provision, the  
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1 The exemption set forth in the preceding sentence shall not  
2 include employees subject to the civil service laws of a State  
3 government, governmental agency, or political subdivision."

4 (5) Section 16 of such Act is amended by striking the  
5 figure "\$3,000,000", and inserting in lieu thereof  
6 "\$5,000,000".

7 (b) (1) The Age Discrimination in Employment Act  
8 of 1967 is amended by redesignating sections 15 and 16,  
9 and all references thereto, as section 16 and section 17,  
10 respectively.

11 (2) The Age Discrimination in Employment Act of  
12 1967 is further amended by adding immediately after section  
13 14 the following new section:

14 "NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL  
15 GOVERNMENT EMPLOYMENT

16 "SEC. 15. (a) All personnel actions affecting employees  
17 or applicants for employment (except with regard to aliens  
18 employed outside the limits of the United States) in military  
19 departments as defined in section 102 of title 5, United  
20 States Code, in executive agencies as defined in section 105  
21 of title 5, United States Code (including employees and ap-  
22 plicants for employment who are paid from nonappropriated  
23 funds), in the United States Postal Service and the Postal  
24 Rate Commission, in those units in the government of the  
25 District of Columbia having positions in the competitive

1 service, and in those units of the legislative and judicial  
2 branches of the Federal Government having positions in the  
3 competitive service, and in the Library of Congress shall be  
4 made free from any discrimination based on age.

5 “(b) Except as otherwise provided in this subsection,  
6 the Civil Service Commission is authorized to enforce the  
7 provisions of subsection (a) through appropriate remedies,  
8 including reinstatement or hiring of employees with or with-  
9 out backpay, as will effectuate the policies of this section.  
10 The Civil Service Commission shall issue such rules, regula-  
11 tions, orders, and instructions as it deems necessary and ap-  
12 propriate to carry out its responsibilities under this section.  
13 The Civil Service Commission shall—

14 “(1) be responsible for the review and evaluation  
15 of the operation of all agency programs designed to  
16 carry out the policy of this section, periodically obtain-  
17 ing and publishing (on at least a semiannual basis)  
18 progress reports from each such department, agency, or  
19 unit;

20 “(2) consult with and solicit the recommendations  
21 of interested individuals, groups, and organizations relat-  
22 ing to nondiscrimination in employment on account of  
23 age; and

24 “(3) provide for the acceptance and processing  
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1 of complaints of discrimination in Federal employment  
2 on account of age.

3 The head of each such department, agency, or unit shall  
4 comply with such rules, regulations, orders, and instruc-  
5 tions of the Civil Service Commission which shall include  
6 a provision that an employee or applicant for employment  
7 shall be notified of any final action taken on any complaint  
8 of discrimination filed by him thereunder. Reasonable ex-  
9 emptions to the provisions of this section may be estab-  
10 lished by the Commission but only when the Commission  
11 has established a maximum age requirement on the basis  
12 of a determination that age is a bona fide occupational quali-  
13 fication necessary to the performance of the duties of the  
14 position. With respect to employment in the Library of  
15 Congress, authorities granted in this subsection to the Civil  
16 Service Commission shall be exercised by the Librarian of  
17 Congress.

18 “(c) Any persons aggrieved may bring a civil action in  
19 any Federal district court of competent jurisdiction for such  
20 legal or equitable relief as will effectuate the purposes of  
21 this Act.

22 “(d) When the individual has not filed a complaint  
23 concerning age discrimination with the Commission, no civil  
24 action may be commenced by any individual under this

1 less than thirty days' notice of an intent to file such action.  
2 Such notice shall be filed within one hundred and eighty days  
3 after the alleged unlawful practice occurred. Upon receiving  
4 a notice of intent to sue, the Commission shall promptly  
5 notify all persons named therein as prospective defendants  
6 in the action and take any appropriate action to assure the  
7 elimination of any unlawful practice.

8 " (e) Nothing contained in this section shall relieve any  
9 Government agency or official of the responsibility to assure  
10 nondiscrimination on account of age in employment as re-  
11 quired under any provision of Federal law."

12 EFFECTIVE DATE

13 SEC. 29. (a) Except as otherwise specifically provided,  
14 the amendments made by this Act shall take effect on the  
15 first day of the first full month which begins after the date  
16 of the enactment of this Act.

17 (b) Notwithstanding subsection (a), on and after the  
18 date of the enactment of this Act the Secretary of Labor is  
19 authorized to prescribe necessary rules, regulations, and  
20 orders with regard to the amendments made by this Act.

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and Minimum Wages" Bulletin of the Department of Labor in 1970, is a comparison between minimum wages and states that the various studies between youth unemployment and major findings in this report:

Factor explaining changes in unemployment has been general for the adult unemployment

the Employment Service minimum wage or the Federal Fair Labor Standards Act between June 1966 and 1967, of nonfarm job openings created a minimum age of 16.

by the study, differential youth, including exemption on the employment of

(with respect to foreign workers) reasonable to conclude that it is factors than rapid technological shifts, national unemployment rates, and the relationship of these might well have similar effects on the wage structure.

on the failure of employers to pay at less than the minimum wage. Only 42% of the hours worked by the argument that certification number of employers work at less than the minimum wage. They indicated subminimum rates.

ing previous raises in the connection between minimum

following statement on wages by the Task Force of the Secretary of Labor in America. This Task Force Elliott L. Richardson's request:

ges constitute the major factors in wages undoubtedly. Certainly, a level of the standard of living is at this point, workers tend to "sit tight"—i.e. in relationship with workers are making to pay are receiving.

The Committee is convinced that establishing subminimum rates for any group of workers unrelated to the work they perform is discriminatory. The youth wage is rejected because discrimination in employment is wrong and the Committee wants no part in legislating discrimination.

#### NONDISCRIMINATION ON ACCOUNT OF AGE IN GOVERNMENT EMPLOYMENT

S. 2747 amends the Age Discrimination in Employment Act of 1967 to include within the scope of its coverage Federal, State, and local government employees (other than elected officials and certain aides not covered by civil service), and to expand coverage from employers with 25 or more employees to employers with 20 or more employees. The annual authorization of appropriations ceiling was raised from \$3 million to \$5 million. The Age Discrimination in Employment Act prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions, or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65. The Administration has also proposed such an extension of coverage for State and local government employees. The amendment is a logical extension of the Committee's decision to extend FLSA coverage to Federal, State, and local government employees. The Senate agreed to this extension by a vote of 86-0 in 1972.

The ADEA prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65.

The Committee recognizes that the omission of government workers from the Age Discrimination in Employment Act did not represent a conscious decision by the Congress to limit the ADEA to employment in the private sector. It reflects the fact, that in 1967, when ADEA was enacted, most government employees were outside the scope of the FLSA and the Wage Hour and Public Contracts Divisions of the Department of Labor, which enforces the Fair Labor Standards Act, were assigned responsibility for enforcing the Age Discrimination in Employment Act.

As the President said in his message of March 23, 1972, supporting such an extension of coverage under the ADEA, "Discrimination based on age—what some people call 'age-ism'—can be as great an evil in our society as discrimination based on race or religion or any other characteristic which ignores a person's unique status as an individual and treats him or her as a member of some arbitrarily-defined group. Especially in the employment field, discrimination based on age is cruel and self-defeating; it destroys the spirit of those who want to work and it denies the Nation the contribution they could make if they were working."

The Committee was impressed by a press release issued by then Secretary of Labor Hodgson on February 4, 1972 which was headed: "Voluntary Compliance with Age Discrimination Laws Opens Up 1 Million Jobs, Secretary of Labor Tells Congress". The release states that informal talks with some 30,000 employers dispelled "preconceived notions or myths" about the older worker.

Omitted from House Report

also omitted

The Committee expects that expanded coverage under the Age Discrimination in Employment law will remove discriminatory barriers against employment of older workers in government jobs at the Federal and local government levels as it has and continues to do in private employment.

#### RECOVERY OF BACK WAGES

Section 26 of the Committee bill amends section 16(c) to authorize the Secretary of Labor not only to bring suit to recover unpaid minimum wages or overtime compensation, a right which the Secretary currently has, but also to sue for an equal amount of liquidated damages without requiring a written request from an employee. The addition of liquidated damages is a necessary penalty to assure compliance with the Fair Labor Standards Act. Currently, all that is required of the employer is the payment of wages that should have been paid in the first place, without any penalty for violating the Act. This is not a deterrent to future violations.

This section would also allow the Secretary of Labor to bring suit even though the suit might involve issues of law that have not been finally settled by the courts. At the present time, many of the protections that are written into the Act are not being extended to workers because of the current restrictions on the Secretary in bringing suits in areas that have not been finally settled by the courts. The Act places the primary responsibility for the enforcement of the Act on the Secretary of Labor; the Secretary should have the right to bring suits directly in order to resolve issues of law.

The Committee also acted on an amendment to Section 16(b) of the Act to make clear the right of individuals employed by state and local governments and political subdivisions to bring private actions to enforce their rights and recover back wages under this Act. This amendment is necessitated by the decision of the U.S. Supreme Court in *Missouri, et al.* (April, 1973) which held that Congress in extending coverage under the 1966 amendments to school and hospital employees in state and local governments did not explicitly provide the individual a right of action in the Federal courts although the Secretary of Labor was authorized to bring such suits. In addition the Committee included an amendment to the Portal to Portal Act of 1947 which would preserve existing actions brought by private individuals which would otherwise be barred by the statute of limitations as a result of the April decision.

Both amendments were included at the request and recommendation of the Administration and the Secretary of Labor.

#### ENFORCEMENT

The Committee is concerned that the Employment Standards Administration of the Department of Labor which now has responsibility for administering the Fair Labor Standards Act appears to be downgrading enforcement of this Act. The Committee wishes to reemphasize that it expects the Department to maintain a vigorous enforcement program under this Act; that coverage should be interpreted broadly; and that every effort should be made to insure that those employees who have been the victims of violations of this Act are made whole.

The Committee is aware that the Act is a significant achievement and a enforcement effort designed to bring with the new standards as quickly.

The Committee recognizes that that decisions must be made as to maximize the effectiveness of workers obtain the full benefits of

As a first step, this involves of their rights and responsibilities which grow out of ignorance having conducted an intensive in Committee recommends that full cover back wages due are the only compliance with the FLSA.

The Committee is concerned that books for 35 years and which has payments are still running at a pace is not unfamiliar with the fact that there is a high probability of covered when only 3 percent of all reported each year and that this continued high level of violations. A percent decline in investigations by Department's announced shift in conciliation efforts and away from purposes of the Act and severely create labor conditions detrimental standard of living necessary for the being of workers."

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To assure that every coverage of the Fair Labor Standards Act and informational program with their rights and employment that was instituted several years 1972. Increased utilization of (ing Education) program where to acquaint businessmen with compliance sessions with industry officials were encouraged to review general guidance and assistance were not in compliance, included found due, and to report the employers participated in various compliance program. In addition standards Administration participation with employers, employment and others which, on the basis provided, resulted in changes achieve compliance. Also in 19